

Legis. Prog.

February 4, 2000

## Memorandum 2000-19

### 2000 Legislative Program

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This memorandum reviews the legislative status of the Commission's recommendations for the 2000 legislative session.

#### PREVIOUSLY APPROVED RECOMMENDATIONS

**Administrative Rulemaking (Wayne – AB 1822).** This recommendation would make a number of changes to the rulemaking provisions of the Administrative Procedure Act to improve the efficiency of the rulemaking process while preserving fundamental protections. The Commission's chairperson is authoring this measure.

**Settlement Negotiations (Ortiz – SB 1370).** This recommendation would make evidence of negotiations to settle a pending civil action or administrative adjudication generally inadmissible in that action or any other noncriminal proceeding. With restrictions, the proposal would also make the negotiations confidential and protect evidence of the negotiations from discovery in a noncriminal proceeding. Senator Deborah Ortiz, who carried parallel legislation for the Commission on mediation confidentiality, has introduced this measure.

**Enforcement of Judgments Under the Family Code.** This recommendation is designed to untangle the statutory confusion between Code of Civil Procedure and Family Code enforcement of judgments provisions. It is being considered for inclusion in an omnibus bill relating to child support (AB 1358 – Shelley and Kuehl).

**Air Resources Technical Revisions.** This is recommended cleanup legislation to correct statutory defects uncovered during the Commission's exploration of the feasibility of an Environment Code. The Assembly Natural Resources Committee (Wayne, Chair) is considering this is a possible committee bill.

**Alternate Distributee for Unclaimed Distribution.** Under this recommendation, when a court orders distribution from a decedent's estate to a person whose whereabouts is unknown, the court must also provide for an alternate distributee. If the primary distributee fails to claim the share within

three years after the date of the order, the alternate distributee would be entitled to that share. This recommendation is not of sufficient magnitude to justify its own bill. It may be included with omnibus State Bar probate legislation, such as AB 1491(Kaloogian) or another bill.

**Goodwill Issues in Eminent Domain.** This recommendation would clear up a number of technical questions that have arisen in connection with compensation for loss of business goodwill in eminent domain proceedings. It is not of sufficient magnitude to justify its own bill. It is currently being considered for inclusion in the Assembly Judiciary Committee omnibus civil practice bill (AB 1669).

**Jurisdictional Classification of Good Faith Improver Claim.** This recommendation would amend Code of Civil Procedure Section 871.3 to clarify the jurisdictional classification of a case that includes a good faith improver claim. It is not of sufficient magnitude to justify its own bill. It is currently being considered for inclusion in the Assembly Judiciary Committee omnibus civil practice bill (AB 1669).

**Eminent Domain Valuation Evidence (AB 321 – Wildman).** This recommendation would clarify obscure language in Evidence Code Section 822(a)(1). The bill was introduced last year and has passed both houses; it is pending concurrence in the Assembly. The bill is hung up on another matter included in it, not on the Commission's part. Assemblyman Wildman's office has indicated they are trying to work out agreed language on the disputed matter, and hope to schedule a conference committee in mid-February.

#### POSSIBLE RECOMMENDATIONS AT FEBRUARY MEETING

The deadline for bill draft requests from Legislative Counsel was January 21, and the bill introduction deadline is February 25. These deadlines will make it difficult to introduce in the current year any recommendations approved by the Commission at the February meeting. However, it is possible that some could be amended into pending legislation, including:

**Access to Rulemaking Under the APA.** This proposal involves a number of minor changes to the rulemaking provisions of the Administrative Procedure Act that would improve public access to information regarding a proposed rulemaking action. If approved by the Commission in February, this could be a candidate for amendment into our omnibus rulemaking bill — AB 1822 (Wayne).

**Authority to Appoint a Receiver.** This proposal would eliminate differences in a court's authority to appoint a receiver depending on whether the underlying litigation is in superior court or in municipal court, and whether the case is classified as a limited civil case or otherwise. If approved by the Commission in February, this could be a candidate for inclusion in the Assembly Judiciary Committee's omnibus civil practice bill — AB 1669.

#### RESOLUTION OF AUTHORITY

The Commission's enabling statute requires the Commission to report at each regular session of the Legislature on its calendar of topics for study, and limits the Commission to those topics on the calendar that are thereafter approved by concurrent resolution of the Legislature. Gov't Code § 8293.

Such a concurrent resolution has already been adopted once during the 1999-2000 regular session. See 1999 Cal. Stat. res. ch. 81 (ACR 17). Since the Commission is not currently requesting that any new topics be added to or old topics be deleted from its calendar, the Commission's chairperson has concluded that there is no point in running through another resolution on the matter this year.

However, the Commission still has under consideration whether to request legislative approval to study the Subdivision Map Act and Mitigation Fee Act. See Memorandum 2000-17, scheduled for consideration at the February meeting. If the Commission decides to request authority on either of these matters, a narrowly-drawn resolution addressed to them should suffice. ("The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for the [sic] study." Gov't Code § 8293). Bill drafting and introduction deadlines do not apply to a concurrent resolution.

Respectfully submitted,

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Executive Secretary